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AMO's Response To: The 1991 Draft Wetlands Policy Statement

Association of Municipalities of Ontario
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MISSION STATEMENT

AMO unites Ontario's municipalities.

We take pride in promoting, supporting and enhancing strong and effective municipal government.

We provide strategic leadership by:

- developing and effectively promoting responsive quality policy;
- informing and educating governments, the media and the public;
- marketing innovative and beneficial services.

Our elected representatives, municipal officials and association staff form a team which values and respects:

- diversity and local autonomy;
- fairness and equity;
- consultation;
- consensus;
- co-operation.

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EXECUTIVE SUMMARY

Introduction

In 1989, the Provincial Government released a draft wetlands policy statement (1989 draft WPS) to which AMO responded. The WPS never reached final approval during the term of the previous government. In September 1991, the Provincial Government released a new draft wetlands policy statement and requested responses within two months (1991 draft WPS).

The WPS represents the Province's commitment to the protection of Provincially Significant Wetlands as part of its ecosystem approach to the management of natural resources. It requires that all planning jurisdictions, including municipalities and planning boards, share in the responsibility for wetland protection.

The implementation guidelines were not released concurrently with the 1991 draft WPS, and therefore AMO, and other responding parties, have not been able to fully evaluate implementation issues. For some policies, it is difficult to fully assess their implications until implementation guidelines are available. AMO therefore recommends that the Wetlands Policy Statement not come into force prior to consultation with the municipal sector on the details of the Implementation Guidelines.

AMO continues to strongly support the Ministries of Natural Resources (MNR) and Municipal Affairs (MMA) in their initiative to preserve Ontario's remaining wetlands; the Association's concerns do not question this objective. AMO's main concerns are related to how the policy statement will relate to other provincial policy priorities, and the necessity for local input and decision-making on appropriately local issues. In particular, AMO is concerned about decision-making for development on lands adjacent to Provincially Significant Wetlands or lands separating wetlands within a wetlands complex.

Competing Provincial Government Priorities

Municipalities are now required to have regard to the policies set out in three adopted Planning Act Policy Statements (affordable housing, floodplain planning, and mineral aggregate resources), one soon-to-be adopted on wetlands, and are also expected to adhere to the requirements from other formal or operating policies of different ministries and agencies (e.g. foodland guidelines). One major roadblock in the planning

approvals process is the lack of a provincial mechanism for the ready resolution of apparent conflicts between provincial interests (such as housing, wetlands, conservation, environmental performance, heritage, or rural land), or for determining relative priorities among different policies.

AMO therefore recommends that the Province establish a formal procedure for expressing provincial priorities with respect to conflicting or potentially conflicting statements, guidelines and any other vehicle for expressing provincial interest with respect to municipal planning. This procedure should provide a clear written statement of provincial priorities to municipalities.

AMO also believes that a process for the periodic review of the WPS should be instituted to ensure that it remain responsive to changing conditions and the actual experience of implementing the Statement.

Northern Ontario

The 1991 draft WPS divides the province into two regions: the Great Lakes - St. Lawrence Region (southern Ontario) and the Boreal Region (northern Ontario). The evaluation and mapping of the southern region has been largely completed. The development of different classification systems for the north is proposed in order to address varying geology and climatic zones and the apparent abundance of wetland area. The MNR is still developing an evaluation system(s) for wetlands in the northern region. Until this has been completed, the 1991 draft WPS states that wetlands will be evaluated by MNR on a case-by-case basis. AMO supports that a standard system, modified along the lines recommended by the Association, be developed in order that wetlands policies can be consistently applied to northern municipalities, and that this should be completed as soon as possible.

AMO also recommends that the MNR and MMA consult with northern municipalities in the development of an evaluation system(s) for, and the mapping of wetland areas in, the Boreal Region.

Definition of Development: Relation to Legal Non-conforming Uses

The 1991 draft WPS definition of development includes alterations or additions to existing structures. Therefore, an OPA would be required to permit the expansion, alteration or additions to an existing building or structure located within a Provincially Significant

Wetland (which the WPS designates as a "no development" area). On lands adjacent to designated wetland areas, or on lands separating wetlands in a wetland complex, an alteration to an existing legal non-conforming use would be permitted if it passed the test of compatibility established in the policy statement. In terms of process, AMO believes that once Provincially Significant Wetlands and their adjacent and separating lands have been designated in official plans and zoning by-laws, then the conventional planning practice for approving minor variances should be followed for legal non-conforming uses. AMO therefore recommends that the definition of development should allow for alterations to legal non-conforming uses which are subject to committee of adjustment procedures.

Definition of "Compatible" Land Uses

AMO has concerns about the definition of "compatible" proposed in the 1991 draft WPS and recommends that the WPS definition for "compatible land uses" correspond to planning use of the term, allowing land uses that do not adversely effect the wetland.

AMO has several questions regarding the criteria for determining "compatible land uses" for Provincially Significant Wetlands, and requests that the MNR clarify these in the Implementation Guidelines.

Adjacent and Separating Lands

Regarding the implementation of the policy statement, AMO re-iterates its original position that for adjacent and separating lands, the determination of protection measures and compatible development and land uses should be left to the local municipal planning process.

Other Issues

AMO believes that the Conservation Authorities' role in the protection of Provincially Significant Wetlands should be specifically defined. This should involve a process of consultation between MNR, AMO and the Association of Conservation Authorities of Ontario.

Although the wetland protection tools are designed primarily for the use of planning professionals, the planning process itself is a public one. The pre-requisite for successful development is community support for local initiatives. AMO therefore recommends that MNR and MMA commit themselves to a public education program aimed at creating greater public awareness of the importance of wetlands.

1 Introduction

In 1989, the Provincial Government released a draft wetlands policy statement (referred to as the 1989 draft WPS). AMO responded to the draft 1989 WPS in report 89-9, *Response to the Draft Wetlands Policy Statement*. The policy statement never reached final approval during the term of the previous government. On September 4, 1991, the new Provincial Government released its draft wetlands policy statement and requested responses within two months (referred to as the 1991 draft WPS).

AMO has reviewed the 1991 version against the Association's previous position. However, the 1991 draft WPS contains some significant changes from the earlier version requiring that the Association re-evaluate its 1989 position.

AMO continues to strongly support the Ministries of Natural Resources and Municipal Affairs in their initiative to preserve Ontario's remaining wetlands. In fact, many municipalities already perceive the importance of wetland protection and have programs to that effect in place. The Association's concerns do not question this objective. AMO's main concerns revolve around general issues related to the operation of the policy statement; and the necessity for local input and decision-making on appropriately local issues. In particular, AMO is concerned about decision-making for development on lands adjacent to Provincially Significant Wetlands or lands separating wetlands within a wetlands complex.

The 1989 draft WPS was issued concurrently with the implementation guidelines. This provided responding parties the opportunity to review and assess the implementation details of the policy statement. Unfortunately, the guidelines were not released concurrently with the 1991 draft WPS, and therefore AMO, and other responding parties, are not able to fully evaluate implementation issues. AMO is concerned, as the 1989 consultation demonstrated, that the guidelines will contain interpretations of how the policy statement should be implemented which go beyond what is stated in the policy statement itself. Also, for some policies, it is difficult to fully assess their implications until implementation guidelines are available. AMO therefore makes the following recommendation.

Recommendation 1

AMO recommends that the Wetlands Policy Statement not come into force prior to consultation with the municipal sector on the details of the Implementation Guidelines.

2 General Comments on the Policy Statement

Interpretation

Section 3(5) of the Planning Act, 1983 states:

> "In exercising any authority that affects any planning matter, the council of every municipality, every local planning board, every Minister of the Crown and every ministry, board, commission or agency of the government, including the Municipal Board and Ontario Hydro, shall have regard to policy statements issued under subsection (1).

Recent experience in the implementation of the Land Use Planning for Housing Policy Statement has illustrated that the interpretation of the requirement "have regard to" means compliance with what is stated in the policy statement. Therefore, it is imperative that the wetlands policy statement be very clear in what requirements are placed on municipalities and what criteria are to be utilized in evaluating land use and development proposals.

Priority of Policy Statements

Municipalities are now required to have regard to the policies set out in three adopted Planning Act Policy Statements (affordable housing, floodplain planning, and mineral aggregate resources), one soon-to-be adopted on wetlands, and are also expected to adhere to the requirements from other formal or operating policies of different ministries and agencies (e.g. foodland guidelines, environment, conservation, transportation, etc.).

In AMO's report on the *Implementation of the Land Use Planning for Housing Policy Statement*, the Association identified that one major roadblock in the

planning approvals process is the lack of a provincial mechanism for the ready resolution of apparent conflicts between provincial interests (such as housing, wetlands, conservation, environmental performance, heritage, or rural land), or for determining relative priorities among different policies. AMO argued that it can be expected that continuing to depend on a case-by-case resolution of these perceived conflicts, rather than on a clear written statement of provincial priorities, will compromise the operation of the policy statements.

In the case of the Wetlands Policy Statement, the question also comes back to whether there is a provincial obligation, parallel to the obligation placed on municipalities, to address the planning approval processes within the Provincial Government in order to resolve conflicting demands that may impair the operation of the Policy Statement.

AMO also expressed its concerns regarding competing provincial policies in response to the 1989 draft WPS. The Association re-iterates its recommendation:

Recommendation 2

The Provincial Government must establish a formal procedure for expressing provincial priorities with respect to conflicting or potentially conflicting statements, guidelines and any other vehicle for expressing provincial interest with respect to municipal planning. This procedure should provide a clear written statement of provincial priorities to municipalities in advance of their creation and/or review of official plans, zoning by-laws and other Planning Act tools.

Periodic Review

AMO has also suggested in its report, *The Implementation of the Land Use Planning for Housing Policy Statement*, that a formal process be instituted for the periodic review and adjustment of all policy statements issued under Section 3 of the *Planning Act, 1983*. The intent of this would be to ensure that the requirements remain responsive to changing conditions and to the actual experience in operating policy statements. AMO therefore believes that this

recommendation should also apply to the wetlands policy statement.

Recommendation 3

AMO believes that a process for the periodic review of the Wetlands Policy Statement should be instituted to ensure that it remain responsive to changing conditions and the actual experience of implementing the Statement.

3 Decision-Making Structure

3.1 Classification

Definition of Provincially Significant Wetlands

An Evaluation System for Wetlands of Ontario: South of the Precambrian Shield was developed in order to assess the relative value of remaining wetlands in Southern Ontario. The aim is to be able to rate wetlands with regard to their relative value so as to ascertain which wetlands are the more valuable.

The system measures wetland values by analyzing various factors which are grouped under four components: biological, hydrological, social and special features. Scores are assigned for each component (based on the contributing factors) and then added together to produce a final evaluation. A wetland classification number (from I to VII) is then assigned based on the total score. The higher the score, the more significant a wetland is deemed in relation to the entire ecosystem of Southern Ontario.

The 1989 draft WPS established Class I & II wetlands as Provincially Significant; Class III, Regionally Significant; and Class IV to VII, Locally Significant.

The 1991 draft WPS establishes Class I, II, and III wetlands as Provincially Significant. Class III wetlands have been added since it has been recognized that class II and III wetlands are not significantly different. The remaining classes (IV to VII) are not designated and are categorized as "other Wetlands" to which the Policy Statement does not apply. At this time

most of southern Ontario has been classified and mapped.

Review and Appeals

In its response to the 1989 draft WPS, AMO stated that the evaluation system should be open for review and re-consideration when necessary, with a possible formal appeals mechanism if Ministry of Natural Resources (MNR)/municipal consultation is unsuccessful. This concern arises primarily from the inherent weakness of the evaluation system's scoring structure. First, all four components are given an equal number of points against which a particular wetland is measured. However, some components are more important than others. For example, AMO considers the hydrological component to be primary given that the biological, social and special features clearly result from the unique hydrological character of a wetland. Secondly, there is concern regarding the subjectivity of measurements of the other components of the evaluation system. While hydrological and biological factors can be scientifically quantified, the social component cannot be, and will differ markedly amongst municipalities, in some cases only because of a municipality's own perception of the social value of its wetlands.

AMO therefore continues to believe that a formal appeal mechanism is necessary in order to review a wetland's classification.

Recommendation 4

AMO recommends that the Provincial Wetlands Evaluation System be provided with an appeals mechanism, by which a municipality and landowner can appeal a wetland designation (its classification and boundaries).

Furthermore, the Ministry of Natural Resources should transmit the wetland scorings to the affected municipalities and landowners.

Recommendation 5

AMO recommends that the details of the scoring system be provided to each of the affected municipalities and landowners.

Other Wetlands: Classes IV to VII

Some wetlands may be evaluated by a local community to be locally significant even though the classification system does not identify them as such.

In the 1989 draft WPS, policy 1.3 stated that "class III to VII wetlands may also be identified in planning documents and protected in a manner deemed appropriate by municipal authorities."

In the interpretation section of the 1991 draft WPS, it states that "planning jurisdictions, including municipalities and planning boards, may protect other Wetlands" which are not deemed Provincially Significant Wetlands (classes I to III).

The 1991 draft WPS does not commit itself to supporting a municipality if it does take the initiative to apply the policy to other than provincially significant wetlands **though it strongly encourages the latter.** AMO is particularly concerned whether a challenge to a municipal initiative of this sort (at the Ontario Municipal Board for example) would be fully supported by the involved ministries.

Recommendation 6

AMO recommends that the Ministries of Natural Resources and Municipal Affairs commit themselves to full and continuous support of a municipal initiative in any wetland protection program.

Northern Ontario

The 1989 draft WPS recognized that wetlands are extensive and widely distributed in northern Ontario, and that development pressures are also lighter in this area than in southern Ontario. However, it was noted that some exceptions exist for this in areas of urban or industrial development or where agriculture is possible.

The 1989 draft WPS only applied its classification scheme to southern Ontario where the rate of wetland conversion has created an urgency to develop a wetland evaluation system on a priority basis. The development of different classification systems for the north was suggested as a next step in order to address varying

geology and climatic zones and the apparent abundance of wetland area. Therefore, the evaluation system did not apply to northern Ontario wetlands but the principles of the policy statement were said to apply province-wide.

The 1991 draft WPS does establish a separate category for northern Ontario, called the Boreal Region, and applies policies to this region.

The MNR is still developing an evaluation system(s) for wetlands in the Boreal Region. Until this has been completed, the 1991 draft WPS states that wetlands will be evaluated by MNR on a case-by-case basis.

In its response to the 1989 draft WPS, the Association supported the MNR in its efforts to develop a system for the effective evaluation of wetlands in Ontario's Northern municipalities. The 1989 draft WPS, while applying to the whole province, also left the evaluation of northern wetlands to a case-by-case basis. AMO supported that a standard system, modified along the lines recommended by the Association, be developed in order that wetlands policies can be consistently applied to northern municipalities. AMO also believes that this classification system(s) should be completed as soon as possible to ensure that evaluations on a case-by-case basis represent only an interim and short-term approach.

In later sections of this response, AMO responds to the application of the wetlands policies to the Boreal Region. In general, AMO would at this point like to make a recommendation on the process for the development of the classification system for northern Ontario.

Recommendation 7

The Ministries of Municipal Affairs and Natural Resources should consult with northern municipalities in the development of an evaluation system(s) for wetlands for the Boreal Region and in the mapping of wetland areas in northern Ontario.

3.2 Specific Policies

3.2.1 Development within Provincially Significant Wetlands

Great-Lakes - St. Lawrence Region

Policy 2 states that "**Development** is prohibited within Provincially Significant Wetlands in the Great Lakes - St. Lawrence Region. **New land uses** are prohibited within Provincially Significant Wetlands in the Great Lakes - St. Lawrence Region unless they do not:

a) result in a loss of **Wetlands Functions**, and
b) create a subsequent demand for measures which will negatively impact on existing **Wetland Functions**, and
c) conflict with existing site specific wetland management practices, and
d) result in a loss of area of Wetland.

Interpretation

Development is prohibited altogether in Provincially Significant Wetlands, whereas **land uses** which pass a test of compatibility and which do not result in a loss of area of wetland, are permitted.

3.2.2 Adjacent Lands and Separating Lands

Adjacent Lands

Policy 5 states that "On **Adjacent Lands**:

a) in the **Great Lakes - St. Lawrence Region**, new **Compatible Land Uses or Development** which do not result in a loss of area of **Wetland** may be permitted.

b) in the **Boreal Region**, new **Compatible Land Uses or Development** may be permitted.

Adjacent lands are defined as those lands within 120 metres of the boundary of Provincially-Significant Wetlands.

Separating Lands within Wetland Complexes

A Wetland Complex is made up of two or more individual wetlands which are functionally related. In wetland complexes, it is the whole complex that is evaluated and classified, not the individual wetland areas.

Land located between wetland areas within a wetland complex are referred to as "separating lands".

Policy for Separating Lands

Policy 4 states that "Despite Policy 2, on lands separating **Wetland Areas** within a **Wetland Complex** in **Provincially Significant Wetlands:**

a) new **Compatible Land Uses or Development** may be permitted in the **Great Lakes - St. Lawrence Region** if they do not result in a loss of area of **Wetland.**

b) new **Compatible Land Uses or Development** may be permitted in the **Boreal Region.**

Interpretation

The above policies establish that adjacent and separating lands are subject to the same criteria or controls for new land uses and development, that is, new land uses or development will be permitted if they pass a specified set of criteria for determining compatibility. In the Great Lakes - St. Lawrence Region, new land uses and development also must not result in a loss of area of wetland. In the Boreal Region, this is not a criterion.

3.3 AMO's Response to the Specific Policies

3.3.1 Definitions

Development vs. Land Uses

The 1991 draft WPS uses two terms for designating what is permitted in or adjacent to Provincially Significant Wetlands: development and land uses. Development is defined as:

a) the construction, erection or placing of a building or structure of any kind; or
b) the making of an addition or alteration to a building or structure that has the effect of changing the size or usability of it; or
c) such activities as site grading and the placing or removal of fill.

Legal Non-Conforming Uses

The implementation mechanisms for protecting designated wetland areas are official plans and zoning

by-laws. Any land, building or structure affected by a zoning by-law passed under Section 34 of the *Planning Act, 1983* may be permitted a minor variance such as an enlargement or extension provided that on the day the by-law was passed the building or structure was lawfully used for a purpose now prohibited by the by-law. Therefore, legal non-conforming uses are permitted enlargement or extensions. Applications to Committees of Adjustment for such variances are subject to a public hearing.

The implementation guidelines to the 1989 draft WPS indicated that legal non-conforming uses could not be expanded. AMO responded that this definition is inconsistent with that contained in *Planning Act, 1983* as described above. AMO therefore recommended that the policy statement definition conform with the *Planning Act, 1983.*

The 1991 draft WPS definition of development continues to exclude alterations or additions to existing structures. As discussed in the following sections, development is not permitted in designated wetland areas. An existing building or structure within a designated wetland area would therefore not be permitted any expansion, alteration or additions. Since it will be required that official plans designate Provincially Significant Wetlands as "no development" areas, a proponent would have to seek an amendment to the official plan in order to carry out such changes to an existing legal non-conforming building or structure. As stated above, under the *Planning Act, 1983,* legal non-conforming uses are not required an official plan amendment in order to receive approval for alterations, but can be permitted a minor variance through the committee of adjustment process. The policy statement therefore continues to be inconsistent with the *Planning Act, 1983* by excluding this category of legal non-conforming uses from application under section 44 of the *Planning Act, 1983.*

In the case of adjacent and separating lands, "compatible development" is permitted. Therefore, it could be assumed that an alteration to an existing legal non-conforming use would be permitted if it passed the test of compatibility established in the policy statement. This test of compatibility is discussed below. In terms of process, at this point AMO wishes to point out that once adjacent and separating lands have been designated in

official plans and zoning by-laws, then the conventional planning practice for approving minor variances should be followed for legal non-conforming uses.

Recommendation 8

AMO recommends that the definition of development should allow for alterations to legal non-conforming uses which are subject to committee of adjustment applications and procedures.

Definition of Land Use

The 1989 draft WPS applied policies to land uses, and did not refer to development. The 1991 draft WPS refers to land uses and development. However, the term "land use" is not defined or distinguished from "development".

Recommendation 9

AMO recommends that if the Wetlands Policy Statement is to refer to land uses and development, then a definition of land use should be provided.

Compatible Land Uses and Development

The policy statement introduces the concept of compatibility to establish criteria for permitting new land uses in designated wetland areas, and new land uses and development on adjacent and separating lands. The 1989 draft WPS tied the definition of compatibility to the wetlands evaluation score and classification, stating that compatible land uses are those which will maintain or improve the overall wetland evaluation score and classification.

In its response to the 1989 draft WPS, AMO recommended that the Evaluation System should not be relied on as a basis for compatibility criteria, and that the policy statement's definition should conform to the accepted planning definition of the term.

The 1991 draft WPS introduces a new set of criteria for determining compatibility in place of the evaluation score and classification. Compatible land

uses or development are defined as those which do not:

a) result in a loss of Wetlands Functions, and
b) create a subsequent demand for measures which will negatively impact on existing Wetlands Functions, and
c) conflict with existing site specific wetland management practices.

Comparison to Conventional Planning Use of the Term "Compatible"

In some respects the definition of "compatible" is an improvement over the 1989 version in that compatibility is no longer tied to the classification system. However, these criteria continue to establish a definition of compatibility which differs from the conventional planning use of the term with respect to development. Conventional planning use usually accepts some impact as a result of development. The criteria infer that there can be a "zero impact/loss" of wetland functions as a result of new land uses or development. AMO questions whether it is possible to have any development which would not have an impact.

Recommendation 10

AMO recommends that the Wetlands Policy Statement definition for "compatible development or land uses" correspond to current planning use of the term, allowing development that does not adversely effect the wetland.

Application of the Definition of Compatible to Provincially Significant Wetlands

In its response to the 1989 draft WPS, AMO recommended that the policy statement apply only to wetlands and not to their adjacent lands. AMO's position was that local authorities should deal with development on adjacent lands so that local conditions can be taken fully into consideration. This position is further elaborated in the next section on implementation.

The following comments and recommendations on the application of the definition of compatibility are therefore made with respect to land uses and development within Provincially Significant Wetlands. This discussion focuses on the definition of compatibility as it is the same as the criteria established in Policy 2 of

the WPS for determining lands uses permitted in Provincially Significant Wetlands.

Notwithstanding that it does not comply with conventional planning use of the term, AMO questions whether the definition of "compatible" is operational. AMO therefore raises the following questions and recommendations for the application of this definition within Provincially Significant Wetlands.

Examples of Compatible Land Uses

The criteria raise the question as to how to determine what forms of development would/would not result in a loss in wetland functions. The implementation guidelines may be able to clarify this, but since they are not available it is difficult to comment at this time. AMO suggests that the implementation guidelines provide examples of compatible land uses which would be permitted in Provincially Significant Wetlands.

Recommendation 11

AMO recommends that the Implementation Guidelines provide specific examples of compatible land uses that would be allowed within Provincially Significant Wetlands.

Determination of Impacts

The definition of "compatible" requires that a proponent prove that his/her land use will not have an impact. It leaves the determination of the degree of impact on a designated wetland area to the MNR. AMO questions how reasonable MNR will be when applying these criteria and what standards will be set for determining impacts.

Definition of Wetland Functions

In addition, AMO believes that the policy statement needs to provide a clearer, more practical definition of "wetland functions". The 1991 draft WPS defines wetland functions as the "biological, hydrological, physical and social/economic interactions that occur in Wetlands." In order to apply these criteria, it is necessary to provide a more specific definition of these functions and examples of what types of land uses could result in a loss of wetland functions.

Recommendation 12

AMO recommends that the Implementation Guidelines provide a more specific definition of wetland functions and examples of what types of land uses could result in a loss of wetland functions.

3.3.2 Implementation

The 1989 draft WPS did not identify specific policies for wetland complexes and therefore did not address development on separating lands. There are significant implications concerning the controls for development on separating lands. In particular, in some municipalities, separating lands encompass substantial territory.

The 1989 draft WPS also did not distinguish between designated wetland areas and adjacent lands and thereby applied the same restrictions and considerations for development on each.

The 1991 draft WPS is an improvement over this in that it does make a distinction between Provincially Significant Wetlands and their adjacent lands and separating lands. However, the same policy restrictions are still imposed on each category (designated wetlands, adjacent lands, and separating lands) for new land uses (which, as noted above, is not defined). For the Great Lakes - St. Lawrence Region, policy 2 (designated wetlands) and policies 5 (adjacent lands) and 4 (separating lands) apply the same controls and definition of compatible **land uses**. Where they differ, is that **development** is prohibited altogether in Provincially Significant Wetlands, whereas **compatible development** is permitted on adjacent and separating lands.

It is expected that the implementation guidelines will address how zoning by-laws are to be introduced as the mechanisms for defining land uses and development permitted in areas designated as wetlands, adjacent and separating lands. As with the 1989 draft WPS, it is expected that zoning by-laws will have to be enacted to establish "restrictive zoning categories". However, as described in the above interpretation, the 1991 draft WPS implies that restricted zoning categories will have to be established for two areas: Provincially Significant Wetlands; and, adjacent lands and lands separating

wetland areas in a wetland complex. For the former, the restrictive zoning category would not permit any development and would only permit new land uses which can be determined to be compatible with wetlands and not result in a loss of area of wetland. For the latter, the restrictive zoning category would permit new land uses and development which can be determined to be compatible with wetlands and not result in a loss of area of wetland.

AMO does not question the value of protecting designated wetland areas, but the 1991 policy raises serious questions about decision-making for determining what land uses or development will be allowed on adjacent and separating lands.

Adjacent and separating lands have been described by MNR staff as not representing buffer or "freeze" zones, but as "red flag" zones. However, the definition of compatibility introduces a large degree of uncertainty as to what will be permitted and how stringently MNR will apply its definition.

It is the Association's position that local municipalities should have the decision-making authority for land uses and development on adjacent and separating lands, in order that local conditions can be taken fully into consideration. Municipalities will be required to pass official plans and zoning by-laws which establish "restrictive zoning categories" for adjacent and separating lands. It should be left to the local municipality to ensure that development allowed in these zones does not result in a loss of area of wetland, and that development is compatible with the wetland.

Recommendation 13

AMO re-iterates its original position that with respect to adjacent and separating lands, the determination of protection measures and compatible land uses and development should be left to the local municipal planning process.

Boreal Region

Policy 3 states that "New land uses and **Development** are generally prohibited within **Provincially Significant Wetlands** in the **Boreal Region**. However, provided that

an **Environmental Impact Study** is carried out by a proponent and approved by the Ministry of Natural resources, new **Compatible Land Uses or Development** may be permitted."

The main difference between the treatment of the north and south regions is that development and new land uses cannot result in a loss of area of wetland in the south. However, in the north, this is not a requirement. Also, unlike the south region, compatible development would also be permitted in the north region.

An environment impact study (E.I.S.) is introduced as an additional mechanism for determining whether development and new land uses will be permitted in the Boreal Region (northern). An E.I.S. is defined as "a study carried out by a proponent and approved by the Ministry of Natural Resources (MNR), to identify and assess the impacts of land uses or development on Provincially Significant Wetlands." This provides the MNR with the power to veto a study if it is found to be unacceptable. This could represent a bad precedent in that any provincial staff professional opinion or judgment should be open to challenge by a proponent, the public, municipal government or the Ontario Municipal Board. The definition should be changed by eliminating the term "approved by".

Recommendation 14

AMO recommends that the definition of an environment impact study should be "a study carried out by a proponent to identify and assess the impacts of land uses or development on Provincially Significant Wetlands" in the Boreal Region.

4 Other Issues

4.1 Jurisdiction of Conservation Authorities

Wetiand protection is an important part of Ontario's Conservation Authorities' water resource strategy.

Conservation Authorities have an active wetlands acquisition program, and currently own approximately 15,843 hectares of wetlands.

The role of Conservation Authorities in the protection of wetlands as laid out in the Wetlands Policy Statement is vague. The 1991 draft WPS states under implementation that:

> Fill, Construction and Alteration of Waterways Regulations issued by Conservation Authorities under the *Conservation Authorities Act* will be used to assist in the implementation of this Policy Statement, where Provincially Significant Wetlands are contained in such regulated areas.

Since these activities can be carried out by Conservation Authorities in their capacity as watershed resource managers as empowered under Section 21 of the *Conservation Authorities Act, 1980*, it is conceivable that a Conservation Authority might have to choose between the directives of the Policy Statement and its responsibilities vis-a-vis watershed management. Considering the importance of Conservation Authorities in the water conservation area, it is crucial that their role in relation to wetlands management and watershed management is clarified. The unavoidable question is whether it is the Conservation Authorities who should have over-all responsibility for administering southern Ontario's provincially significant wetlands? To be truly effective, the wetlands protection program should be undertaken in the broader context of watershed management. This is in keeping with the Association's position that the task of protecting wetlands' hydrological component is of primary importance.

Recommendation 15

The Conservation Authorities' role in the protection of Provincially Significant Wetlands should be specifically defined through a process of consultation among the Ministry of Natural Resources, the Association of Municipalities of Ontario, and the Association of Conservation Authorities of Ontario.

4.2 Public Education

Although the wetland protection tools are designed primarily for the use of planning professionals, the planning process itself is a public one. The pre-requisite for successful development is community support for local initiatives.

AMO would like to see some attempts to "package" the policy statement in such a way that better emphasizes the positive and tangible benefits of wetlands protection. In response to the 1989 draft WPS, AMO recommended that the background section of the Wetlands Policy Statement more fully elaborate on the purpose and goals of the government's wetlands protection program. AMO provided the example of the Flood Plain Planning Policy Statement as one way of providing more thorough background information that the Association would like to see in the Wetlands Policy Statement.

In addition, municipalities' own studies show that there is quite a high level of public support for water conservation measures, including wetlands protection. However, a clearer statement from the government - both in the text of the Wetlands Policy Statement and through a co-ordinated public education program - on the tangible benefits of protecting Ontario's wetlands will help municipalities defend their own actions in that direction. This would complement AMO's earlier recommendation for a definite commitment of ministerial support.

Recommendation 16

The Ministries of Natural Resources and of Municipal Affairs commit themselves to a public education program aimed at creating greater public awareness of the importance of wetlands.

5 Conclusions

AMO continues to strongly support the Ministries of Natural Resources and Municipal Affairs in their initiative to preserve Ontario's remaining wetlands. The Association's concerns do not question this objective. AMO's main concerns revolve around two key issues related to the operation of the policy statement -- the need for the Provincial Government to establish a formal procedure for expressing provincial priorities with respect to conflicting or potentially conflicting policy statements and guidelines with respect to municipal planning; and the necessity for local input and decision-making for development on lands adjacent to Provincially Significant Wetlands or lands separating wetlands within a wetlands complex.

AMO has recommended that the Wetlands Policy Statement not come into force prior to consultation with the municipal sector on the details of the Implementation Guidelines. Discussions with and input from AMO and the municipal sector on the Implementation Guidelines can help to address some of the Association's concerns expressed in this response. However, it is also clear that particularly with respect to policies for adjacent and separating lands, AMO's response calls for the re-drafting of parts of the Wetlands Policy Statement.

6 Summary of Recommendations

Recommendation 1	AMO recommends that the Wetlands Policy Statement not come into force prior to consultation with the municipal sector on the details of the Implementation Guidelines.
Recommendation 2	The Provincial Government must establish a formal procedure for expressing provincial priorities with respect to conflicting or potentially conflicting statements, guidelines and any other vehicle for expressing provincial interest with respect to municipal planning. This procedure should provide a clear written statement of provincial priorities to municipalities in advance of their creation and/or review of official plans, zoning by-laws and other Planning Act tools.
Recommendation 3	AMO believes that a process for the periodic review of the Wetlands Policy Statement should be instituted to ensure that it remain responsive to changing conditions and the actual experience of implementing the Statement.
Recommendation 4	AMO recommends that the Provincial Wetlands Evaluation System be provided with an appeals mechanism, by which a municipality and landowner can appeal a wetland designation (its classification and boundaries).
Recommendation 5	AMO recommends that the details of the scoring system be provided to each of the affected municipalities and landowners.
Recommendation 6	AMO recommends that the Ministries of Natural Resources and Municipal Affairs commit themselves to full and continuous support of a municipal initiative in any wetland protection program.
Recommendation 7	The Ministries of Municipal Affairs and Natural Resources should consult with northern municipalities in the development of an evaluation system(s) for wetlands for the Boreal Region and in the mapping of wetland areas in northern Ontario.
Recommendation 8	AMO recommends that the definition of development should allow for alterations to legal non-conforming uses which are subject to committee of adjustment applications and procedures.

Recommendation 9	AMO recommends that if the Wetlands Policy Statement is to refer to land uses and development, then a definition of land use should be provided.
Recommendation 10	AMO recommends that the Wetlands Policy Statement definition for "compatible development or land uses" correspond to current planning use of the term, allowing development that does not adversely effect the wetland.
Recommendation 11	AMO recommends that the Implementation Guidelines provide specific examples of compatible land uses that would be allowed within Provincially Significant Wetlands.
Recommendation 12	AMO recommends that the Implementation Guidelines provide a more specific definition of wetland functions and examples of what types of land uses could result in a loss of wetland functions.
Recommendation 13	AMO re-iterates its original position that with respect to adjacent and separating lands, the determination of protection measures and compatible land uses and development should be left to the local municipal planning process.
Recommendation 14	AMO recommends that the definition of an environment impact study should be "a study carried out by a proponent to identify and assess the impacts of land uses or development on Provincially Significant Wetlands" in the Boreal Region.
Recommendation 15	The Conservation Authorities' role in the protection of Provincially Significant Wetlands should be specifically defined through a process of consultation among the Ministry of Natural Resources, the Association of Municipalities of Ontario, and the Association of Conservation Authorities of Ontario.
Recommendation 16	The Ministries of Natural Resources and of Municipal Affairs commit themselves to a public education program aimed at creating greater public awareness of the importance of wetlands.

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Appendix A - Acknowledgments

The Association of Municipalities of Ontario wishes to thank the following for their contribution to this response:

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